IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2509 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHIVKUMAR R VARMA

Versus

PUNJAB NATIONAL BANK

Appearance:

MR KS ACHARYA for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 02/03/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India at the instance of the workman, challenging the judgement and award of the Industrial Tribunal [Central], Ahmedabad in Reference [ITC] No. 21/89, whereby the reference of the petitioner - workman

was rejected.

2. Before discussing the merits of the present petition, it is desirable to bear in mind the principles laid down by the Supreme Court in the context of the scope and ambit, and the powers and limitations of the High Court, while exercising jurisdiction under Article 227 of the Constitution of India. The Supreme Court, in the case of Mohmmad Yunus v/s Mohammad Mustaqim [AIR 1984 SC 38] and Khali Ahmed Bashir v/s Tufelhussein S. Sarangpurwala [AIR 1988 SC 184], has held that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected.

3. The case of the workman as set out in the statement of claim at exh.2 was that he was appointed as cashier cum godown keeper by order dated 26th October 1986 with the erstwhile Hindustan Commercial Bank Ltd., that he was appointed on a temporary basis for a specific period of 89 days, but he was entitled to absorption in the regular service of the bank by virtue of the service conditions governing the employees of the said bank, under which a reserved quota was created for sons and unmarried daughters of the existing employees of the bank, that the workman had completed his written test and personal interview held on 7th July 1985 and 12th August 1985 and consequently he was placed on "empanelment list". It was his own case that he was during this tenure appointment paid at the rate of Rs.35/- per day. Thereafter, the Hindustan Commercial Bank Ltd. closed down on 24th May 1986. Thereafter, on 18th December 1986, the Ministry of Finance, Government of India issued a notification under sub-section [7] of section 45 of the Banking Regulations Act, 1949, whereby the erstwhile Hindustan Commercial Bank was amalgamated with the Punjab National Bank, and as per the scheme of amalgamation and particularly clauses 10 and 11 thereof, the services of the erstwhile employees of the Hindustan Commercial Bank Ltd. were transferred to the Punjab National Bank. It was therefore the contention of the workman that since he was placed on the "empanelment list", as a result of the written test and interview, he was eligible to be an employee of the erstwhile Hindustan Commercial Bank Ltd., and therefore, the same rights would be available against the successor bank namely, Punjab National Bank.

Since the latter bank did not give him any employment, the workman chose to file the reference,

which came to be rejected as aforesaid.

4. The Labour Court found on facts which are not disputed and/or undisputable, that clauses 10 and 11 of the scheme of amalgamation under which the Hindustan Commercial Bank Ltd. came to be merged with the Punjab National Bank, clearly set out that all the employees of the transferor bank [the Hindustan Commercial Bank Ltd.] shall continue to be in service and be deemed to have been appointed by the transferee bank [the Punjab National Bank] at the same remuneration and on the same terms and conditions of service..... etc.

5. The respondent - Punjab National Bank in its written statement at exh.5 raised many objections, including the objection as to maintainability of the reference. So far as the maintainability is concerned, the respondent - bank specifically contended that there was never any relationship of `employer and employee' between the petitioner and the respondent and that therefore, the reference is incompetent. This written statement also set out a detailed defence on the facts of the case, into which we need not enter for the present. Suffice it to say that the Punjab National Bank specifically contended that, on his own admission and as per the claim statement of the workman himself, he was not an employee of the Hindustan Commercial Bank on 24th May 1986, when the said bank was closed down, and obviously he was not an employee of the said bank on 18th December 1986, when the notification under sub-section [7] of section 45 of the Banking Regulations Act, 1949 came to be published. In this context, it was also contended that even assuming that the present petitioner was on the "empanelment list" of the erstwhile Hindustan Commercial Bank Ltd., it could only mean that he was eligible for regular appointment by that bank, but since that right to be appointed [as and when suitable vacancy arose] had not fructified, the right to obtain an appointment in future was not a right and/or obligation which was transferable or enforceable against the successor bank namely, the Punjab National Bank.

6. The Labour Court, after examining the various contentions of the parties, and after appreciating the evidence on record, upheld the contentions raised by the respondent - bank, and rejected the reference.

7. Shorn of verbiage (of which there is plenty) the simple point on which the reference could have been dealt with, and ultimately has been dealt with, is on the following facts :-

[i] The petitioner's name was merely on the "empanelment list", and he has not worked even for a single day as a regular employee with the erstwhile Hindustan Commercial Bank ltd.

[ii] His employment with the Hindustan Commercial Bank Ltd. was for a specific tenure of 89 days which expired in February 1986, and after February 1986, he had not worked with the Hindustan Commercial Bank Ltd.

[iii] He had not worked even for a single day with the Punjab National Bank.

[iv] His employment with the Hindustan Commercial Bank Ltd. was on a temporary basis on fixed wages of Rs.34/- per day.

[v] On 24th May 1986, when the Hindustan Commercial Bank Ltd. closed down, he was not an employee with the Hindustan Commercial Bank Ltd., either as a regular employee nor as an adhoc employee on tenure appointment.

On the basis of the above stated facts, which are very easily culled out from the claim statement and the written statement of the parties, the simple conclusion which follows, and must necessarily follow is that since the petitioner was at no point of time a regular employee of the erstwhile Hindustan Commercial Bank Ltd., he had no claim to be absorbed as a regular employee with the Punjab National Bank, whether under the scheme of amalgamation, or under any other law. It also follows that the best status ever acquired by the petitioner with the Hindustan Commercial Bank Ltd. was that of a candidate who was merely eligible for regular appointment. However, this eligibility cannot be enforced against the successor bank, because the rights and obligations of the parties are limited and confined to those which are specifically set out in the scheme of amalgamation approved of under the Companies Act and by clauses 10 and 11 of the Schedule to the Scheme of Amalgamation. Nowhere is it stated, nowhere is it asserted, and nowhere is it propounded, that a mere right to obtain regular appointment in future is a right which survives on closure of the erstwhile Hindustan Commercial Bank Ltd., and is also a right which is enforceable against the successor bank. The Tribunal was therefore justified in rejecting the reference.

7. In the premises aforesaid, I find that there is no substance in the present petition and the same is accordingly dismissed. Rule discharged with no orders as to costs.

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